

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review Branch**

**188 Finest Deli Corp,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0215411**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), that the record supports that 188 Finest Deli Corp. (Appellant), committed violations of the Supplemental Nutrition Assistance Program (SNAP) regulations. There is sufficient evidence to sustain a six month disqualification of Appellant from the SNAP, as imposed by the Office of Retailer Operations and Compliance (Retailer Operations).

**ISSUE**

The issue accepted for review is whether Retailer Operations took appropriate action in its administration of the SNAP, consistent with 7 CFR § 278.6(f)(1), 7 CFR § 278.6(a), and 7 CFR § 278.6(e), when it imposed a six month period of disqualification against Appellant.

**AUTHORITY**

7 U.S.C. § 2023, and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6, or § 278.7, may file a written request for review of the administrative action with the Food and Nutrition Service (FNS).

**CASE CHRONOLOGY**

The USDA conducted an investigation of the compliance of Appellant with federal SNAP law and regulations during the period of February 5, 2019 through April 13, 2019. The investigative report dated April 18, 2019, documented that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on multiple dates. The items sold are best described as common nonfood items. As a result of evidence compiled during the investigation, by letter

dated April 26, 2019, Retailer Operations charged Appellant with violating the terms and conditions of the SNAP regulations. Misuse of SNAP benefits was noted in Exhibits A, C, D and E, that warrants a disqualification of Appellant as a SNAP retail food store for a period of six months. The letter also states that under certain conditions FNS may impose a civil money penalty (CMP) in lieu of a disqualification. By letter dated April 30, 2019, the representative requested additional time to provide a response to the Charge letter. The representative made a FOIA request dated May 19, 2019. The FOIA office provided a FOIA reply dated June 4, 2019. This reply was appealed September 2, 2019, and the FOIA office replied to the appeal on February 19, 2021.

Retailer Operations informed Appellant by Determination letter dated April 6, 2021, that the violations cited in the Charge letter occurred at the firm, and that a six month period of disqualification was warranted. The letter also stated that eligibility for a hardship CMP was not applicable as there are other authorized retail food stores in the area selling as large a variety of staple foods at comparable prices. The representative requested review of the determination by letter dated April 16, 2021. The review was granted by letter dated May 4, 2021.

### **STANDARD OF REVIEW**

In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means the Appellant has the burden of providing relevant, credible evidence, that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true.

### **CONTROLLING LAW AND REGULATIONS**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 278.6(a) and (e)(5) establish the authority upon which a six month disqualification may be imposed against a retail food store.

7 CFR § 278.2(a) states: “SNAP benefits may be accepted by an authorized retail food store only from eligible households or the households’ authorized representative, and only in exchange for eligible food.”

7 CFR § 278.6(a) states: “FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system.”

7 CFR § 278.6(e)(5) of the SNAP regulations states that a firm is to be disqualified for six months “if it is to be the first sanction for the firm and the evidence shows that personnel of the

firm have committed violations such as but not limited to the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management.”

7 CFR § 278.6(f)(1) provides for civil money penalty assessments in lieu of disqualification in cases where disqualification would cause hardship to SNAP benefit households because of the unavailability of a comparable participating food store in the area to meet their shopping needs. It states: “FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm's disqualification would cause hardship to SNAP benefit households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices.”

### **SUMMARY OF THE CHARGES**

A report of the investigation was provided to the Appellant as Exhibits with the Charge letter. The investigative report provides details on the results of each compliance visit. The investigative report documents that SNAP violations were recorded during multiple store visits, that warrant a six month disqualification. The SNAP violations of 7 CFR § 278.2(a) involved the sale by store personnel of nonfood items for benefits. The nonfood items exchanged by store personnel included: trash bags, cleaner, bleach, a toothbrush, dryer sheets, laundry powder, toothpaste, and antiperspirant.

### **APPELLANT'S CONTENTIONS**

Consideration was made of all contentions as presented, whether recapitulated here or not.

- My client did not commit any wrong doing in the entire life of his business. The owner confirms that these transactions probably didn't take place at his business. The owner stated that all his helpers are trained well and he usually asks his helpers to read through the SNAP refresher training materials on line. During the visit the owner was away due sickness and he has no way to confirm the legitimacy of the charges.
- This business has been always in compliance and never had any violations since he opened up for business. Almost on daily basis he turns away customers requesting cash exchanges and he refuses the sales of ineligible items. Even the investigation report furnished shows this business shows efforts to be in compliance.
- The report of the investigation conducted from 02/05/2019 to 04/13/2019 shows my client and his helpers rejected many ineligible transactions/ sales.
- My client trains his helpers using videos and materials on FNS website on monthly basis. This business and the owner were unfairly treated, similar business been issued only warning letter or offered to pay penalty.
- My client also expressed interest in CMP instead of suspension, however, the USDA reviewing officer failed to offer it. Please impose a Civil Monetary Penalty.

## **ANALYSIS AND FINDINGS**

This review is to either validate or to invalidate the determination made by Retailer Operations, and it is limited to the facts at the basis of Retailer Operations' determination at the time it was made. The documentation under review supports that the violative transactions were conducted at Appellant by store personnel, on different dates. The owner submitted no evidence to support that the transactions did not occur at Appellant. Retailers are informed that it is their responsibility to ensure that store personnel are properly trained regarding the SNAP rules. Regardless of whom the owner of a store may utilize to handle store business, the firm's owner is accountable for the proper training of personnel, and the effective monitoring and handling of SNAP benefit transactions.

Upon review, the evidence supports that Appellant's store personnel established a record of selling nonfood items as defined by Section 271.2 of the regulations, on multiple occasions. The regulations at 7 CFR § 278.6(e)(5) specify that FNS shall "disqualify the firm for six months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as, but not limited to, the sale of nonfood items due to carelessness or poor supervision by the firm's ownership or management." Three violations are considered evidence of carelessness. The preponderance of evidence under review supports that Appellant's personnel sold nonfood items on multiple store visits in exchange for SNAP benefits, a program violation that warrants a six month disqualification.

## **CIVIL MONEY PENALTY**

Retailer Operations rendered a finding that it was not appropriate to impose a CMP in lieu of a six month period of disqualification from SNAP. The record documents that there are other authorized stores within a nearby radius of Appellant that stock a variety of comparable staple foods at comparable prices, including ethnic foods. Retailer Operations concluded that the evidence does not support that it will cause hardship for SNAP recipients if Appellant is disqualified as stipulated by the regulations. Therefore, Appellant was properly deemed not eligible for a hardship CMP.

## **CONCLUSION**

The preponderance of the evidence in the record supports that the program violations charged did occur at Appellant. The record documents that Retailer Operations properly evaluated Appellant's eligibility for a hardship CMP according to the terms of Section 278.6(f)(1) of the regulations. On review, it is decided that Retailer Operations properly denied a CMP. Therefore, the six month disqualification of Appellant from participation as an authorized retail food store in the SNAP is sustained.

This penalty shall become effective thirty (30) days after delivery of this decision. A new application for participation in the SNAP may be submitted ten days prior to the expiration of the

six month period of disqualification. Please contact the Retailer Center at 877-823-4369 with general questions regarding the SNAP application process.

### **RIGHTS AND REMEDIES**

Attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023), and to the regulations at 7 CFR § 279.7 with respect to the owner's right to judicial review of this decision. If a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which the owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of delivery of this Decision.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

M. Viens  
ADMINISTRATIVE REVIEW OFFICER

June 4, 2021